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NATIONAL ENERGY BOARD FINDING

In the Matter of Condition 12 (1)
of the Northern Pipeline Act

July 1980

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IN THE MATTER OF the National Energy Board
Act and the Northern Pipeline Act; and
AND IN THE MATTER of a public hearing with
respect to Condition 12(1) of schedule III
of the Northern Pipeline Act: File No. 1045-4

NATIONAL ENERGY BOARD

25 and 26 April and 1, 5, 6 and 7 May 1980.

FINDING

In the Matter of Condition 12(1) of the
Northern Pipeline Act

July 1980

Ce rapport est publié
séparément dans les
deux langues officielles

IN THE MATTER OF the National Energy Board
Act and the Northern Pipeline Act; and

AND IN THE MATTER OF a public hearing with
respect to Condition 12(1) of Schedule III
of the Northern Pipeline Act; File No. 1045-4

HEARD IN Ottawa on:

29 and 30 April and 1, 5, 6 and 7 May 1980.

BEFORE:

C.G. Edge	Presiding Member
L.M. Thur	Member
R.B. Horner	Member

APPEARANCES:

J. Lutes)	
C.W. Sanderson	)	Foothills Pipe Lines (Yukon) Ltd.
J. Hopwood, Q.C.	)	Alberta Gas Trunk Line Company Limited
S.A. Wakefield	)	ANB Gas Company
	)	United Gas Pipeline Company
J.B. Ballem, Q.C.	)	Canadian Petroleum Association
	)	Consolidated Natural Gas Limited
G.D. Nichols	)	Northern Border Pipeline Company
	)	Northern Natural Gas Company
J.H. Smellie	)	Dome Petroleum Limited
E.F. Ryan	)	Imperial Oil Limited
J. Moriarty)	
A.E. Potter	)	Independent Petroleum Association of Canada
E.B. McDougall	)	Northwest Alaskan Pipeline Company
J. Lutes	)	Pan-Alberta Gas Ltd.

D.G. Hart	)	ProGas Limited	:
W.T. Houston	)	Tennessee Gas Pipeline Company	
H. Soloway, Q.C.)		
J.H. Farrell	)	The Consumers' Gas Company	
L.H. Pilon	)	TransCanada PipeLines Limited	
A. Butler	)	Union Gas Limited	
R. Salter	)	Union of British Columbia Indian	
	)	Chiefs	
I. Waddell, M.P.	)	Himself	
J.M. Johnson	)	Ministry of Energy for Ontario	
W.J. Klassen	)	Government of Yukon	
K.J. MacDonald	)	National Energy Board	
A. Bigu�)		

NEB FINDING IN RESPECT TO CONDITON 12 OF SCHEDULE III OF THE
NORTHERN PIPELINE ACT

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ABBREVIATIONS AND DEFINITIONS

Alaskan Northwest	Alaskan Northwest Natural Gas Transportation Company, successors to the Alcan Pipeline Company, to build the Alaskan section of the Alaska Natural Gas Transportation System. Formerly known as the Alcan Project.
Board or NEB	The National Energy Board.
Consolidated	Consolidated Natural Gas Limited.
Eastern Leg	See Northern Border System.
F.E.R.C.	The United States Federal Energy Regulatory Commission. Formerly the Federal Power Commission.
Foothills (Yukon)	Foothills Pipe Lines (Yukon) Ltd. is the parent company responsible for the Canadian portion of the Alaska Natural Gas Transportation System.
Northern Border System	A natural gas pipeline system to be built by Northern Border Pipeline Company (the U.S. Eastern Leg) for transporting gas from an interconnection with the facilities of Foothills (Sask.) at the international boundary near Monchy, Saskatchewan, to points of delivery in the eastern United States.
Pan-Alberta	Pan-Alberta Gas Ltd.
ProGas	ProGas Limited.
TransCanada	TransCanada PipeLines Limited.
Western Delivery System	A natural gas transportation system over existing and new facilities of the Northwest Pipeline Corp. and El Paso Natural Gas Co. pipeline systems for transporting gas from a point of interconnection with the Western Leg at Stanfield, Oregon, to southern California.

Line to Stanfield Oregon A natural gas transportation system over existing and new facilities of Pacific Gas Transmission Co. for transporting gas from a point of interconnection with the facilities of Foothills (South B.C.) at the international boundary near Kingsgate, B.C., to Stanfield, Oregon.



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INTRODUCTION

On the 2nd day of April, 1980, the National Energy Board issued Order No. NPO-2-80 which amended condition 12 of Schedule III of the Northern Pipeline Act.

On the 3rd day of April, 1980, the Board issued Order No. GH-4-80 setting down a public hearing for the purpose of providing Foothills (Yukon) with an opportunity to comply with the requirements of Condition 12(1) as amended by Order No. NPO-2-80. Although Order No. NPO-2-80 had not then received the required approval of the Governor in Council, the Minister responsible for the Northern Pipeline, the Honourable H.A. Olson, had advised the Board that it would assist the government's decision making process if the Board would initiate a hearing into the financing of the pipeline in Canada referred to in that Order. Therefore, although neither the Northern Pipeline Act nor the National Energy Board Act required the Board to hold a public hearing on Condition 12, the Board, of its own motion, called a hearing under subsection 20(3) of the National Energy Board Act to consider Condition 12(1) as amended.

A public hearing was held in Ottawa commencing on the 29th day of April and concluding on the 7th day of May, 1980. At this hearing, Foothills (Yukon) and other interested parties were heard.

On the 9th day of May, 1980, the Board issued a statement on Condition 12 which outlined four (4) matters, that the Board wished to draw to the attention of all parties before the Board made any finding on Condition 12. The Board further stated that the satisfactory resolution of the four (4) issues reviewed in that statement would go a long way to paving the way for a Board finding on Condition 12 as amended. No other insurmountable financing issues in Canada were identified by the Board.

BACKGROUND

The four (4) issues set forth in the Board's Statement of the 9th day of May, 1980, were as follows:

1. The Board wished to know that there were credit worthy parties willing to pay the tariff in the form proposed.
2. The Board wished to be assured that the Canadian tariff would be tracked by United States regulatory authorities.
3. The Board wished to be assured that there was sufficient throughput of gas committed to the prebuild facilities to make them financeable. This primarily related to whether ProGas and its customers would commit up to 7.65 billion cubic metres (270 Bcf) of its exports to prebuild facilities.

4. The Board was concerned whether the FERC requirement of a minimum payment for Alberta gas transmitted on prebuild facilities, instead of the take or pay provisions in the Pan-Alberta contract, would adversely affect the financability of the pipeline.

Since that time several events have occurred and decisions have been made. The Federal Energy Regulatory Commission has certificated the line to Stanfield Oregon and the Western Delivery System and has reviewed its decision on the Eastern Leg of the prebuilt portion of the Alaska Natural Gas Transportation System. The review removed impediments to financing the Northern Border Pipeline, improved the Canadian floor price, and strengthened F.E.R.C.'s position on tracking the Canadian tariff for the mainline. The Commission has also approved the import of gas by Consolidated on the Northern Border System.

On June 19, 1980 the Prudhoe Bay producers (Exxon, B.P. - Sohio, and Arco) signed an agreement with the sponsors of Alaskan Northwest. This contained an understanding to share the expenditure of some \$500 million to complete the further design and engineering work required for the building of the pipeline and the gas conditioning plant in Alaska and the determination of precise cost estimates. In addition, a Statement of Intention (Appendix D) was signed which binds the parties to work together on a financing plan and to complete the pipeline by 1985.

The United States Congress in late June passed a joint resolution (Appendix E) lending support to the pre-building concept because of its contribution to facilitating the completion of the entire project efficiently and expeditiously. The resolution declared that it was "the sense of the Congress that the system remains an essential part of securing this nation's energy future and, as such, enjoys the highest level of Congressional support for its expeditious construction and completion by the end of 1985".

The President of the United States in a letter to the Prime Minister of Canada on July 17, 1980 (Appendix F) expresses his assurance "that the U.S. Government not only remains committed to the project: I am able to state with confidence that the U.S. Government now is satisfied that the entire Alaska Natural Gas Transportation System will be completed. The United States energy requirements and the current unacceptable level of dependence on oil imports require that the project be completed without delay in the construction schedule. Accordingly, I will take appropriate action directed at meeting the objective of completing the project by the end of 1985".

In his statement to the Senate on July 17, Senator Olson announced that the Government was satisfied with the assurances received that the section of the pipeline in the United States can be financed and will be completed expeditiously.

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On 17 July 1980 the Governor in Council approved -

1. The amendment of Condition 12 of Schedule III of the Northern Pipeline Act contained in Board Order NPO-2-80.
2. The amendment of the Pan-Alberta export licences and the issue of the new licences recommended by the Board to permit the Company to export a further 14.1 billion cubic metres (498 Bcf) of natural gas.
3. The amendment of the Consolidated and ProGas export licences recommended by the Board so as to include Monchy, Saskatchewan, as an export point. This will permit natural gas to be transmitted on the prebuild pipeline facilities.

FINDING

Turning now to the requirement that the Board make a finding in respect to Condition 12 on financing in Canada before construction is allowed to begin, the Board has in its "statement" (Appendix C) indicated that for all practical purposes financing has been obtained for prebuild facilities and can be obtained for the remainder of the pipeline in Canada, subject to the four issues mentioned at the commencement of this finding.

On June 27, 1980 the Board wrote to Foothills (Yukon) (Appendix G) requesting it to state its position in regard to the four issues and to indicate whether it is "prepared to

proceed with the construction and financing of the project". Foothills (Yukon) in its reply (Appendix H) indicated that it was prepared to proceed.

With regard to the first issue the Board wishes to know that there are credit worthy parties willing to pay the tariff in the form proposed. On May 29, 1980 the Board requested Foothills (Yukon) to file evidence on these matters including financial statements and prospectuses of shippers of Alaskan gas, purchase contracts for Prudhoe Bay gas and letters of intent from shippers to enter into service agreements with Foothills (Yukon) for transportation of such gas. On the basis of the evidence submitted, the Board is satisfied that this issue has been dealt with satisfactorily.

With respect to the second issue the Board wished to be assured that the Canadian tariff would be tracked by United States regulatory authorities.

In a decision on June 20, 1980 on a re-hearing of a number of matters related to the Eastern Leg of the pipeline in the United States, the Federal Energy Regulatory Commission reiterated their "firm committment to proceed on an expedited basis to develop an appropriate mechanism to provide for the requisite tracking of Canadian transportation charges, and have instructed the Commission's Alaskan Delegate to proceed accordingly". This was the most that could reasonably be

expected in view of the possible impediment posed by a restriction in the President's Decision⁽¹⁾ in the pass-through of any charge to U.S. consumers prior to the commissioning of the entire system. The Commission further stated that it "believes that the Agreement and the Transit Pipeline Treaty clearly contemplate that the regulatory authorities in each country will administer the regulation of their respective segments according to the laws and practices which normally govern their activities. These principles of comity and sovereign prerogative are specifically acknowledged in the Treaty as well as in the Agreement between the two countries. Consistent with those principles, the Commission will exercise the fullest extent of its lawful authority to provide for shipper tracking of NEB approved transportation charges. We will continue to co-operate and work with Canadian regulatory authorities to develop an appropriate mechanism to this end".

The letter from the President to the Prime Minister (Appendix F) acknowledges the right of the Canadian Company to collect a full cost of service tariff once it is ready to go into operation and concedes also that some amendment to his Decision and Report to Congress may be necessary to permit such charge to be tracked through to U.S. consumers. He states that "Existing U.S. law and regulatory practices may cast doubt on

(1) Presidents Decision - The U.S. President's Decision and Report to Congress on the Alaska Natural Gas Transportation System. September 1977.

the matter. For this reason and because I remain steadfastly of the view that the expeditious construction of the project remains in the mutual interest of both our countries, I would be prepared at the appropriate time to initiate action before the U.S. Congress to remove any impediment as may exist under present law to provide that desired confidence for the Canadian portion of the line".

Removal of the impediment to tracking the tariff will require a waiver under Section 8 of the Alaska Natural Gas Transportation Act. The President's statement in conjunction with the Congressional resolution (Appendix E) lend confidence that such a waiver will be forthcoming.

For all of the above reasons, the Board is satisfied that tracking of the tariff will occur so as to permit the financing of the pipeline.

On the third issue the Board wished to be assured that there was sufficient throughput of gas committed to prebuild facilities to make them financeable. This primarily related to whether ProGas would commit up to 7.65 billion cubic metres (270 Bcf) of its exports to prebuild facilities. ProGas has continued to reaffirm in principle its willingness to do so and has applied to F.E.R.C to have the matter resolved. It has not yet committed the requisite volumes, but is still expected to do so. The issue arose because of TransCanada's statement that it would not invest in the Northern Border Pipeline System

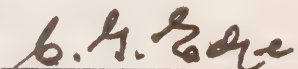
without such a ProGas commitment. TransCanada now states that the resolution of the problem may be characterized as a business risk and that such a commitment is no longer a prerequisite of its participation in the Northern Border Project (Appendix H). The Board is therefore satisfied that the issue, previously identified, no longer exists.

On the fourth issue the Board was concerned whether the F.E.R.C. requirement of a minimum payment for Alberta gas transmitted on prebuild facilities, instead of the take and pay provisions in the Pan-Alberta contract, would adversely affect the financeability of the pipeline. The F.E.R.C has amended its earlier decision. It did not incorporate the current border price for Canadian gas exports in the formula, as the Board would have preferred, but it did provide for escalation in the U.S. \$3.45 price and pointed out that it was a "floor" and in no way precluded imports at higher prices. Foothills (Yukon) has now indicated that it is satisfied with the F.E.R.C decision (Appendix H). The Board also is satisfied that the F.E.R.C. decision is not an obstacle to financing the pipeline. Turning to the specific requirements of condition 12(1), on the basis of the foregoing the Board makes the following findings:

- (a) the company has filed with the Board evidence that
the company has been incorporated in Canada and is

not a non-eligible person within the meaning of the Foreign Investment Review Act as that expression was defined in that Act on April 13, 1978;

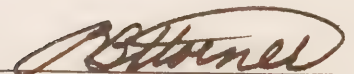
- (b) the company has established to the satisfaction of the Board that financing has been obtained for that portion of the pipeline, hereinafter referred to as the prebuilt sections, that will be used for the transmission of Canadian natural gas to the United States prior to the completion of the pipeline;
- (c) the company has established to the satisfaction of the Board that financing of that portion of the pipeline other than the prebuilt sections, hereinafter referred to as the northern section, can be obtained to enable the pipeline to be completed before the end of 1985 and that protection can be provided against risk of non-completion of the pipeline and interruption of construction on a basis acceptable to the Minister and the Board; and
- (d) the company has filed with the Board documents relating to the financing obtained for the prebuilt sections and such documents include all relevant contracts and instruments.



C.G. Edge
Presiding Member



L.M. Thur
Member



R.B. Horner
Member

NATIONAL ENERGY BOARD



OFFICE NATIONAL DE L'ÉNERGIE

ORDER NO. NPO-2-80

IN THE MATTER OF the Northern Pipeline Act
and the Regulations made thereunder;

AND IN THE MATTER OF amending condition 12 of
Schedule III, pursuant to subsection 20(4) of
the Northern Pipeline Act.

B E F O R E the Board on Wednesday, the 2nd day of April 1980.

WHEREAS the Board may amend any condition set out in
Schedule III to the Northern Pipeline Act, pursuant to subsection
20(4) of the Act, subject to such amendment being effective with the
approval of the Governor in Council;

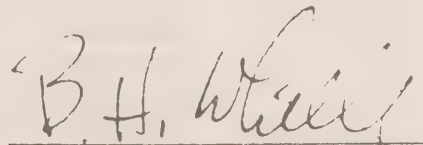
AND WHEREAS condition 12 of Schedule III of the Northern
Pipeline Act does not provide for the commencement of construction
of a portion of the pipeline where the financing of the whole has
not been obtained;

AND WHEREAS the Board considers that the provisions of
condition 12 of Schedule III do not encompass the circumstances
related to the prebuilding of the southern sections of the pipeline
and without in any way changing or altering the requirements under
paragraph 4 of the Agreement set out in Schedule I of the Northern
Pipeline Act.

NOW THEREFORE the National Energy Board, pursuant to
subsection 20(4) of the Northern Pipeline Act, hereby amends
Schedule III of the Northern Pipeline Act in accordance with the
schedule attached hereto.

DATED at the City of Ottawa, in the Province of Ontario,
this 2nd day of April, 1980.

NATIONAL ENERGY BOARD



Brian H. Whittle
Secretary

SCHEDULE

Condition 12 of Schedule III to the Northern Pipeline Act is rescinded and the following substituted therefore:

- "12. (1) The company shall, before the commencement of construction of the pipeline,
- (a) file with the Minister and the Board evidence that the company has been incorporated in Canada and is not a noneligible person within the meaning of the Foreign Investment Review Act as that expression was defined in that Act on April 13, 1978;
 - (b) establish to the satisfaction of the Minister and the Board that financing has been obtained for that portion of the pipeline, hereinafter referred to as the prebuilt sections, that will be used for the transmission of Canadian natural gas to the United States prior to the completion of the pipeline;
 - (c) establish to the satisfaction of the Minister and the Board that financing of that portion of the pipeline other than the prebuilt sections, hereinafter referred to as the northern section, can be obtained to enable the pipeline to be completed before the end of 1985 and that protection can be provided against risk of noncompletion of the pipeline and interruption of construction on a basis acceptable to the Minister and the Board; and
 - (d) file with the Minister and the Board documents relating to the financing obtained for the prebuilt sections and such documents shall include all relevant contracts and instruments.

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- (2) The company shall, before commencing construction of that portion of the pipeline other than the prebuilt sections,
- (a) establish to the satisfaction of the Minister and the Board that financing has been obtained for the northern section and such financing includes protection against risk of noncompletion of the pipeline and interruption of construction on a basis acceptable to the Minister and the Board;
 - (b) file with the Minister and the Board all documents relating to the financing of the pipeline not already filed pursuant to 12(1)(c) above; and
 - (c) provide evidence to the Minister and the Board that debt instruments issued in connection with the financing of the pipeline do not contain a provision requiring the consent of the holders of those debt instruments to the financing of the construction of the Dempster Line referred to in the Agreement or any other provision, apart from normal trust indenture provisions generally applicable in the pipeline industry, that would prohibit, limit or inhibit the financing of the construction of the Dempster Line."

ORDER NO. GH-4-80

IN THE MATTER OF the National Energy Board
Act and the Northern Pipeline Act; and

IN THE MATTER OF a public hearing with
respect to Condition 12(1) of Schedule
III of the Northern Pipeline Act; File No. 1045-4

B E F O R E the Board on Thursday, the 3rd day of April, 1980.

WHEREAS the Board has issued Order No. NPO-2-80
amending Condition 12 of Schedule III of the Northern Pipeline
Act, which Order shall not come into effect until approved by
the Governor in Council;

AND WHEREAS Foothills Pipe Lines (Yukon) Ltd. is
required by Condition 12(1) of Schedule III of the Northern
Pipeline Act, as amended by Order No. NPO-2-80 to file certain
material with the Board and to establish certain facts to the
satisfaction of the Board;

AND WHEREAS the Board finds it advisable to hold a
public hearing under Section 20(3) of the National Energy Board
Act to afford an opportunity for Foothills Pipe Lines (Yukon)
Ltd. and others in the energy sector, the provinces and the
general public who have an interest in such subjects to be
heard;

IT IS ORDERED THAT:

1. A public hearing shall be held in the Hearing Room
of the National Energy Board, 473 Albert Street, in the City
of Ottawa, in the Province of Ontario, commencing on the 29th
day of April, 1980, at 9:30 a.m. local time, for the purpose
of providing Foothills Pipe Lines (Yukon) Ltd. with an oppor-
tunity to comply with the requirements of Condition 12(1) of
Schedule III of the Northern Pipeline Act, as amended by Order
No. NPO-2-80. Such proceedings will be conducted in either of
the two official languages and simultaneous interpretation will
be provided should a party to the proceedings request such
facilities in its intervention.

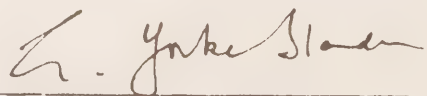
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2. Foothills Pipe Lines (Yukon) Ltd. shall arrange to have notice of the said hearing, in the form prescribed by the Board, as set forth in the notice attached to and forming part of this Order, published on or before the 10th day of April, 1980, or as soon thereafter as practicable, in one issue each of "The Sun", in the City of Vancouver, in the Province of British Columbia; "The Herald", in the City of Calgary, and "The Journal", in the City of Edmonton, both in the Province of Alberta; "The Leader Post", in the City of Regina, in the Province of Saskatchewan; "The Free Press", in the City of Winnipeg, in the Province of Manitoba; "The Globe and Mail", in the City of Toronto, "The Citizen" and "Le Droit", in the City of Ottawa, all in the Province of Ontario; "The Gazette" and "Le Devoir", in the City of Montreal, in the Province of Quebec; and, as soon as may be possible, in the Canada Gazette.

3. Any respondent or intervenor intending to intervene in the said hearing on those matters set out in Condition 12(1) of Schedule III of the Northern Pipeline Act, as amended by Order No. NPO-2-80, shall, on or before the 22nd day of April, 1980, file with the Secretary of the Board thirty (30) copies of a written statement, in either of the two official languages, containing his intervention together with supporting information, particulars, or documents, which shall include a concise statement of the facts from which the nature of the intervenor's interest in the proceedings may be determined, and which shall be endorsed with the name and address of the intervenor or his solicitor to whom communications may be sent.

DATED at the City of Ottawa, in the Province of Ontario, this 3rd day of April, 1980.

NATIONAL ENERGY BOARD



for Brian H. Whittle
Secretary

GH-4-80

NOTICE OF HEARING

NATIONAL ENERGY BOARD

NOTICE OF PUBLIC HEARING

TAKE NOTICE that the National Energy Board will hold a public hearing with respect to Condition 12(1) of Schedule III of the Northern Pipeline Act, as amended by Order No. NPO-2-80, which Order shall not come into effect until approved by the Governor in Council, commencing on April 29th, 1980, at 9:30 a.m. local time, in the Hearing Room of the National Energy Board, 473 Albert Street, in the City of Ottawa, in the Province of Ontario.

The hearing will be conducted in either of the two official languages, and simultaneous interpretation will be provided should a party to the proceedings request such facilities in his intervention.

Any respondent or intervenor intending to intervene in the said hearing on those matters set out in Condition 12(1) of Schedule III of the Northern Pipeline Act, as amended by Order No. NPO-2-80, shall, on or before the 22nd day of April, 1980, file with the Secretary of the Board thirty (30) copies of a written statement, in either of the two official languages, containing his intervention together with supporting information, particulars, or documents, which shall include a concise statement of the facts from which the nature of the intervenor's interest in the proceedings may be determined, and which shall be endorsed with the name and address of the intervenor or his solicitor to whom communications may be sent.

DATED at the City of Ottawa, in the Province of Ontario, this 3rd day of April, 1980.

NATIONAL ENERGY BOARD

Brian H. Whittle
Secretary

STATEMENT OF CONDITION 12 OF SCHEDULE III
OF THE NORTHERN PIPELINE ACT

The Board, having heard evidence and argument in relation to Condition 12, as amended by NPO-2-80 which is subject to Governor in Council approval, of the certificates of public convenience and necessity issued to subsidiaries of Foothills (Yukon) wishes to make the following statement.

The Northern Pipeline Act, in the opinion of the Board, requires the building of the whole of the pipeline in Canada; in other words, it is an integrated project. In the Board's view the Act does not prohibit the building of the pipeline in two stages; for example the southern part first and the northern part later. It does require that there must be a commitment to the whole of the pipeline in Canada before construction could start on prebuild facilities. This in turn means a commitment to the whole of the pipeline in both Canada and the United States.

The realities of the financial community are such that it is unlikely that financing will be in place for the second stage construction before the construction of the first stage has begun. In the Board's view this does not negate the fact that the construction of the Foothills (Yukon) pipeline is a fully integrated two-stage project. The integrated nature of the project depends on adequate assurance of commitment to the total project. That is what Condition 12 is all about. It is clear to the Board that certain pre-conditions requisite for the financing of the pipeline in Canada have not yet been fulfilled.

There are three issues of major concern in this Hearing and one other issue on which the Board has reservations. The Board wishes to draw these matters to the attention of all parties before the Board makes any finding on Condition 12.

The first major issue relates to the start of the tariff and the categorical and repeated statement made by Foothills (Yukon) that when its pipeline to carry Alaska gas is complete and approved for service, it wishes to be paid in full for its service; otherwise its sponsors will not be willing to commit equity to the project and Foothills (Yukon) would not build the pipeline. Payment for services when the pipeline is ready, is permitted under the tariff provisions of the Northern Pipeline Act. Both the current FERC and NEB previously approved tariffs provide for a potential temporary abatement of certain charges during the initial start-up of the flow of Alaska gas.

The FERC has not yet been asked if it would authorize the "tracking" of the requirement of Foothills (Yukon) for full payment on completion of the pipeline, which is the preferred position of Foothills (Yukon), and Foothills (Yukon) recognizes that there may be other means of achieving its goals based on the presently approved tariff. In its decision on Phase IV(b) of the Tariff and Financing Hearing, the Board approved in principle the application of Foothills (Yukon) for a tariff based on payment of the full cost of service when leave to open has been granted for

the whole of the pipeline in Canada. As an alternative, if supplementary financing is arranged to meet the requirements of Foothills (Yukon) that it be paid in full when able to provide service, the Board's approval in principle of the previous Foothills (Yukon)'s tariff containing a 60 day delay, minimum bill and interim rate is left unchanged. Since the tariff and its tracking are said by Foothills (Yukon) to be keys to financing the pipeline, the Board cannot make a finding on Condition 12 in the absence of a clarification of this issue. The Board wishes to know that there are credit worthy parties willing to pay the tariff in the form proposed. This statement is made in the knowledge that the Canadian Government wishes to consider all matters relevant to the authorization of prebuild facilities by the end of May or early June.

The second issue relates to all aspects of the "tracking" of the Canadian tariff by United States regulatory authorities. The FERC has stated in principle that it will authorize tracking of the Canadian tariff and has addressed certain specific issues of tracking U.S. pipeline company tariffs, but has not yet ruled on the Foothills (Yukon) tariff as previously approved by the NEB. This is understandable given that the NEB Tariff Hearings have only just finished. The Board would like to know as soon as possible that the FERC is willing to authorize the "tracking" of the Canadian tariff.

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Since the authorization of tracking by the FERC is said by Foothills (Yukon) to be a key to financing, the Board must be satisfied that the tariff can be tracked before it can be satisfied that Condition 12 has been fulfilled.

The third and fourth issues relate to "assured throughputs" for the pipeline, another key to its financing. On the third major issue, the Board, with the approval of the Governor in Council, has already issued licences committing significant export volumes to the pipeline and has recently recommended that the Governor in Council approve further volumes, already declared surplus, for export through prebuild facilities. There remains about 10 to 15 billion cubic metres (400 to 500 Bcf) of throughput needed to assure the financing of the Eastern Leg. This throughput could be achieved by transferring part of Progas and Consolidated volumes, presently committed to the TransCanada system. Both Consolidated and Progas have requested that Monchy, Saskatchewan on the route of the prebuild pipeline be added as an export point in their export licences. Consolidated has now undertaken to commit to ship the requisite volumes through the line of about 5 billion cubic metres (180 Bcf). ProGas has not yet done so and indicated in evidence that it could be one or two months before its United States customers were ready to do so. ProGas has frequently re-interated its intent to facilitate the financing of prebuild facilities. The

letter of the United States Secretary of Energy to the Chairman of the Federal Energy Regulatory Commission, dated April 24, 1980 states on page 1:

"Finally, completion of the prebuild portions of the system by 1981, and their successful operation during the early 1980's will facilitate private financing of the remainder of the System".

The Board understands that this timetable will require a decision on whether or not to proceed in June. In the Board's opinion, the prospect of a significant delay in the prebuilding of the eastern leg could be prejudicial to the prebuild project and to the whole of the Alaska Natural Gas Transportation System. The negotiations of the United States Progas customers with the partners of Northern Border have been protracted but in the opinion of the Board should be capable of quick resolution. When the customers of ProGas have made a decision, the import at Monchy and the transportation of the gas on the Northern Border System will still require authorization from U.S. regulatory authorities. The Board urges the parties to arrive at a decision, in the near future in order that the Governments of both countries can deal effectively with the issue of prebuilding part of the Alaska Natural Gas Transportation System.

The final issue relates to doubts cast on the "assured throughputs" by one aspect of the FERC decision on Northern Border. On page 64 the Decision states:

"In the expectation that a cap on the take-and-pay obligations at \$3.45 per MMBtu will provide adequate revenues to support producer investment, the Commission adopts the following conditions to the import authorizations provided herein:

- (1) The Buyer's obligation under Article IV.A.3 of the Pan-Alberta gas supply contract is limited to U.S. \$1,380,000 per day (800,000 Mcf/day x \$3.45/Mcf x 50 percent).
- (2) The Buyer's obligation under Article IV.A.4 of the Pan-Alberta gas supply contract is limited to U.S. \$856,290,000 per year (800,000 Mcf/day x 365 days x \$3.45/Mcf x 85 percent)."

The letter from the United States Secretary of Energy, already mentioned, states on page 3 that:

"When acting on minimum take requirements, it is essential that the commission consider the effect of such requirements on our policy that imports of Canadian gas continue to be competitive with alternative fuels in U.S. markets."

The FERC appears to have used the U.S. \$3.45 (\$3.22 per GJ) price because it was the price of gas exported from Canada at the time the FERC proceeding closed and was known to be competitive with alternative fuels. However, the price of imported crude oil had risen by the equivalent of \$1.00 per GJ (\$1.00 per MMBtu) when Canada subsequently increased its border price to U.S. \$4.17 per GJ (\$4.47 per MMBtu) and the price of imported crude oil has increased again since then. The FERC acknowledges that the Energy Regulatory Administration is presently studying the marketability of Canadian gas and will announce by May 15, 1980 whether it will make permanent its temporary import permits issued in February at a price of U.S. \$4.17 per GJ (\$4.47 per MMBtu).

If it does so, this will confirm the marketability of Canadian gas at the current price. If it does not do so, the FERC decision states at page 54:

"In the event that the Administration does not approve the importation of any natural gas from Canada at a border price of \$4.47, then the import authorization granted herein will be further limited by a condition that the price of the gas to be imported in connection with the prebuild of the Northern Border segment be adjusted downward to the highest price for imported gas approved by the Administrator of E.R.A."

The FERC further states, on page 53, that:

"The Commission believes that ERA's findings in Opinion and Order 14 are relevant to the Commission's consideration here."

It is likely to become evident by May 15, 1980 that the Commission's use of \$3.45 as a test of marketability is out-of-date and therefore not in conformity with the criterion of the U.S. Secretary of Energy mentioned earlier. Secondly, the FERC decision to use \$3.45 appears to be, in part, based on the assumption stated on page 60, footnote 71, as follows:

"As this test is based on deliverability from established reserves, the Commission assumes that no field development expenditures are required as part of the projects."

Evidence to the contrary was adduced in the present proceedings. The Pan-Alberta producer contracts were for 12 years but the export licences are only for 6 years in the Eastern Leg and 8 years on the Western Leg. Both the Pan-Alberta and the Progas producers, as well as the Independent Petroleum Association of Canada, indicated that the amount of gas available

to the pipeline would be reduced if the minimum payment based on U.S. \$3.45 per MMBtu's were to prevail. All sought a modification of this condition and that it reflect current market values for the year to which it would be applied.

While the FERC decision should not cause a reduction in licenced volumes if they are competitive with alternative fuel prices, it could cause doubts in the perceptions of investors. On page 62 the Commission states:

"Under this modification, the obligation of the U.S. purchasers to take gas would go down if the border price went up."

The above situation has to be set in the context that financing for Northern Border (and also Foothills (Sask)) has not yet been demonstrated. Canada has provided potential major support of "assured throughputs" for Northern Border by the NEB recommendation of additional export licences, and by TransCanada's backstopping throughput agreement using Canadian gas. A Canadian company and a Canadian bank are also planning to provide significant equity and debt capital to finance Northern Border. Any perception of a weakening of the assurance of throughput in the FERC decision would seem to be out of harmony with the Canadian contribution enumerated above.

For the above reasons; the Board believes it to be desirable that reconsideration be given by the FERC to the minimum payment provision of its Northern Border Decision based on:


- (a) the criterion of marketability required by the U.S. Secretary of Energy,

- (b) the forthcoming finding of E.R.A. on marketability,
- (c) the fact that FERC intends to mandate the price in the ERA decision and this would appear to obviate the need for minimum payments,
- (d) new evidence on the field development investments of Canadian producers.

Northern Border, although generally satisfied with the FERC Decision as a whole, indicated to the Board that it intends to seek a modification of the minimum payment requirement and of some other aspects of the Decision.

The satisfactory resolution of the four issues reviewed in this statement would go a long way to paving the way for a Board finding on Condition 12 as amended. No other insurmountable financing issues in Canada were identified, but there are a number of supporting steps required for financing to take place.

The views of the Board expressed in the foregoing relate to Canada only. As indicated at the begining of this statement the Board regards it as self-evident that the complementary parts of the pipeline system in the United States must be financeable if the line in Canada is also to be financed.



C.G. Edge
Presiding Member



L.M. Thur
Member



R.B. Horner
Member

STATEMENT OF INTENTION BY PRUDHOE BAY PRODUCERS
AND SPONSORS OF NORTHWEST ALASKA

Atlantic Richfield Company, Exxon Corporation, and The Standard Oil Company (Ohio) (the producers) and Alaskan Northwest Natural Gas Transportation Company, a partnership (Alaskan Northwest) enter into this joint statement of intention at the request of the United States Department of Energy.

Preliminary Recitals

The producers and Alaskan Northwest have a common interest in the efficient and cost-effective construction and operation of the Alaska Natural Gas Transportation System (ANGTS) including the conditioning plant at the earliest practicable date. Alaskan Northwest has developed a construction schedule for the ANGTS which would result in completion of the system in 1985.

The facilities to be constructed in the State of Alaska which are necessary to placing the ANGTS in service require immense capital investment, and private sector lenders who will be asked to advance funds for the construction of Alaskan facilities will require reasonable assurance that the facilities will be completed and placed in service, and their debt serviced.

The President's Decision and Report to Congress describes the plan for private financing of the ANGTS to be implemented by Alaskan Northwest. Alaskan Northwest has indicated that the Alaskan segment of ANGTS can be financed in the private sector, if there is meaningful participation by the producers in the financing structure. The producers have indicated willingness to participate in a substantial way with Alaskan Northwest in the financing of the Alaskan pipeline and conditioning plant upon reasonable terms and conditions, provided they are not placed in the position of becoming, in effect, the ultimate guarantors of completion of the ANGTS and provided that their financial exposure is effectively limited.

In an effort to move forward in surmounting the acknowledged difficulties presented by this project, the parties have entered into a cooperative agreement for continued design and engineering of the Alaskan gas pipeline and the conditioning plant which will prepare natural gas produced from the Prudhoe Bay unit of Alaska for transmission through ANGTS.

Statement of Intention

It is the mutual objective of the producers and Alaskan Northwest that ANGTS be completed and placed in service at the earliest practicable date and, accordingly, the producers and Alaskan Northwest intend to use their best efforts, on a joint and cooperative basis, to expedite design, engineering and cost estimation.

The producers, together with their advisers, will work with Alaskan Northwest in an effort to develop its financing plan in such time and manner so that necessary governmental approvals may be obtained and construction commenced and completed as scheduled by Alaskan Northwest.

It is recognized that in order for the financing plan to be acceptable to the financial community, the project must be economically sound and the financing plan must accommodate reasonably desired protection for the interests of potential lenders. If the parties, or any of them, conclude that alternative approaches in financing, or waivers of law under the Alaskan Natural Gas Transportation Act are necessary to effectuate a feasible and effective plan of financing, such party or parties may develop alternatives and advise appropriate authorities of their conclusions.

This statement of intention shall be signed after approval thereof by the Department of Energy and the Department of Justice.

In witness whereof, the parties have executed this statement this 19th day of June, 1980.

Alaskan Northwest Natural Gas Transportation Company, Acting By and Through its "Operator", Northwest Alaskan Pipe line Company.

BY _____

Atlantic Richfield Company

BY _____

Exxon Corporation

BY _____

Standard Oil Company (Ohio)

BY _____

N.B. A signed copy of this Statement
is held in NEB File 1045-4

Concurrent Resolution Expressing the Sense of Congress
Regarding the Importance of the
Alaska Natural Gas Transportation System

Whereas, the Alaska Natural Gas Transportation System is a critically important energy project that will tap Alaska's North Slope natural gas reserves which constitute more than ten percent of this nation's entire proven natural gas reserves;

Whereas, the System, when complete, will supply the United States with five percent of its annual natural gas demand, displacing over 400,000 barrels of oil, thereby greatly reducing this nation's excessive dependence on foreign oil;

Whereas, the Congress has already expressed its overwhelming support for the System in approving by joint resolution the President's 1977 Decision on the Alaska Natural Gas Transportation System;

Whereas, a portion of the System known as prebuild can be constructed by the end of 1981 to bring Canadian gas to this nation until the entire system is complete in 1985;

Whereas, prebuild will contribute to completion of the entire system by spreading demand for capital, labor and materials over several years, and will enable this nation to obtain Canadian natural gas to displace 200,000 barrels of foreign oil a day;

Whereas, the Federal Energy Regulatory Commission has issued decisions granting certificates for the prebuild facilities in the United States;

Whereas, the Sponsors of the Alaskan segment of the system and the North Slope natural gas producers have entered into an agreement to fund and manage jointly the design, engineering and cost estimation for the Alaskan segment and have made a joint Statement of Intention to work to develop a financing plan for the Alaskan segment with the object of completing construction by the end of 1985; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring)
that it is the sense of Congress that the System remains an essential part of securing this nation's energy future and, as such, enjoys the highest level of Congressional support for its expeditious construction and completion by the end of 1985.

July 17, 1980

Dear Mr. Prime Minister:

Since you last wrote to me in March, the United States Government has taken a number of major steps to ensure that the Alaska Natural Gas Transportation System is completed expeditiously.

Most significantly, the Department of Energy has acted to expedite the Alaskan project. The North Slope producers and Alaskan segment sponsors have signed a joint statement of intention on financing and a cooperative agreement to manage and fund continued design and engineering of the pipeline and conditioning plant. The Federal Energy Regulatory Commission recently has certified the eastern and western legs of the system.

The United States also stands ready to take appropriate additional steps necessary for completion of the ANGTS. For example, I recognize the reasonable concern of Canadian project sponsors that they be assured recovery of their investment in a timely manner if, once project construction is commenced, they proceed in good faith with completion of the Canadian portions of the project and the Alaskan segment is delayed. In this respect, they have asked that they be given confidence that they will be able to recover their cost from U.S. shippers once Canadian regulatory certification that the entire pipeline in Canada is prepared to commence service is secured. I accept the view of your Government that such assurances are materially important to insure the financing of the Canadian portion of the system.

The Right Honorable
Pierre Elliott Trudeau, P.C., Q.C., M.P.,
LL.L., M.A., F.R.S.C.,
Prime Minister of Canada,
Ottawa

Existing U.S. law and regulatory practices may cast doubt on this matter. For this reason, and because, I remain steadfastly of the view that the expeditious construction of the project remains in the mutual interests of both our countries, I would be prepared at the appropriate time to initiate action before the U.S. Congress to remove any impediment as may exist under present law to providing that desired confidence for the Canadian portion of the line.

Our Government also appreciates the timely way in which you and Canada have taken steps to advance your side of this vital energy project. In view of this progress, I can assure you that the U.S. Government not only remains committed to the project; I am able to state with confidence that the U.S. Government now is satisfied that the entire Alaska Natural Gas Transportation System will be completed. The United States' energy requirements and the current unacceptable level of dependence on oil imports require that the project be completed without delay. Accordingly, I will take appropriate action directed at meeting the objective of completing the project by the end of 1985. I trust these recent actions on our part provide your government with the assurances you need from us to enable you to complete the procedures in Canada that are required before commencement of construction on the pre-build sections of the pipeline.

In this time of growing uncertainty over energy supplies, the U.S. must tap its substantial Alaskan gas reserves as soon as possible. The XXVI trillion cubic feet of natural gas in Prudhoe Bay represents more than ten percent of the United States' total proven reserves of natural gas. Our governments agreed in 1977 that the Alaska Natural Gas Transportation System was the most environmentally sound and mutually beneficial means for moving this resource to market. Access to gas from the Arctic regions of both countries is even more critical today as a means of reducing the dependence on imported petroleum.

Successful completion of this project will underscore once again the special character of cooperation on a broad range of issues that highlights the U.S./Canadian relationship.

I look forward to continuing to work with you to make this vital energy system a reality.

Sincerely,

(Signed: Jimmy Carter)

N.B.: A signed copy of this statement is held in NEB
File No. 1045-4

NATIONAL ENERGY BOARD

OTTAWA, ONTARIO
K1A 0E5



APPENDIX G

Page 1 of 2

OFFICE NATIONAL DE L'ÉNERGIE

OTTAWA, ONTARIO
K1A 0E5

File No.: D1045-4

June 27, 1980.

Mr. Bruce Simpson,
Vice President,
Foothills Pipe Lines (Yukon) Ltd.,
1600 Bow Valley Square II,
205 5th Avenue S.W.,
Box 9083,
Calgary, Alta.
T2P 2W4.

Dear Mr. Simpson:

Re: NEB Statement Relating to
Condition 12, Schedule III
of the Northern Pipeline Act

The Board, on May 9, 1980, made a statement in relation to Condition 12(1) of Schedule III of the Northern Pipeline Act, as amended by Order No. NPO-2-80, which order is subject to Governor-in-Council approval.

In its statement the Board identified three issues of major concern in the hearing and one other issue on which the Board had reservations. The concerns of the Board will have to be satisfied before a finding on Condition 12(1) can be made.

Recognizing that some movement on the four issues has occurred in the time since the statement was made, the Board would like to know if any concerns Foothills (Yukon) might have had on the four issues identified by the Board have been met.

On the first issue, is Foothills (Yukon) now satisfied that there are credit-worthy parties willing to pay the tariff in the form proposed?

Secondly, have Foothills (Yukon)'s concerns regarding the tracking of its tariff been met?

Thirdly, with respect to assured throughputs, have the customers of ProGas been able to reach an agreement with Northern Border for the transportation of ProGas exports at Monchy? If not, does this constitute a block to the financing of the project?

- 2 -

Lastly, does the FERC decision authorizing the import of gas from Pan-Alberta under a Minimum Annual Bill impede the financing of the project?

Taking all factors into consideration, is Foothills (Yukon) prepared to proceed with the construction and financing of the project? Your response should be based on the assumption that the Minister and the Board have been satisfied in respect of Condition 12 and that the Canadian and United States Governments are satisfied with the assurances required under Clause 4 of the Canada/U.S. Agreement on Northern Pipelines.

Yours truly,

A handwritten signature in dark ink, appearing to read "G. Yorke Slader". The signature is fluid and cursive, with the first name "G." and last name "Slader" being clearly legible.

G. Yorke Slader,
Secretary.

FOOTHILLS PIPE LINES (YUKON) LTD.

BRUCE W. SIMPSON
VICE PRESIDENT

1600 BOW VALLEY SQUARE II
205 - FIFTH AVE. S.W. BOX 9083
CALGARY, ALBERTA T2P 2W4
PHONE (403) 237-1422

July 7, 1980

Mr. Geoffrey Yorke Slader
Secretary
National Energy Board
473 Albert Street
Ottawa, Ontario
K1A 0B5

Dear Mr. Yorke Slader:

In the information request dated June 27, 1980, the Board seeks the views of Foothills (Yukon) on a number of issues identified by the Board in respect of the hearings dealing with Condition 12(1) of Schedule III of the Northern Pipeline Act, as amended by Order No. NPO-2-80, which is subject to Governor-In-Council approval. The following sets out the views of Foothills (Yukon) on the five areas the Board identifies.

1. Is Foothills (Yukon) now satisfied that there are credit-worthy parties willing to pay the tariff in the form proposed?

Foothills (Yukon) is satisfied that there are credit-worthy parties willing to pay the tariff in the form proposed. In this respect, Foothills (Yukon) filed with the Board on June 13, 1980, Letters of Intent to execute the mainline service agreement and related financial data for shippers involved in the purchase of Alaskan gas.

2. Have Foothills (Yukon)'s concerns regarding the tracking of its tariff been met?

Foothills (Yukon) is satisfied that tracking of its tariff or, alternatively, some other acceptable form of payment will be arranged within United States' jurisdiction, if necessary by legislative action, which we understand the United States administration is prepared to initiate at the appropriate time.

Page two
Mr. Geoffrey Yorke Slader
July 7, 1980

APPENDIX H
Page 2 of 2

On June 20, 1980, the Federal Energy Regulatory Commission responded to Foothills (Yukon)'s request for a statement regarding the tracking of charges under the Foothills (Yukon) transportation tariff:

"We take this opportunity to reiterate our firm commitment to proceed on an expedited basis to develop an appropriate mechanism to provide for the requisite tracking of Canadian transportation charges, and have instructed the Commission's Alaskan Delegate to proceed accordingly."

3. With respect to assured throughputs, have the customers of Progas been able to reach an agreement with Northern Border for the transportation of Progas exports at Monchy? If not, does this constitute a block to the financing of the project?

An agreement has not yet been reached with the customers of Progas for the transportation of Progas exports at Monchy. This does not constitute a block to the financing of the project. The Northern Border partners have agreed, unanimously, to accept the Federal Energy Regulatory Commission Certificate for the Northern Border pre-build. TransCanada Pipelines Limited has informed Foothills (Yukon) that it is prepared to proceed with its commitments to the pre-build project based on the regulatory approvals which have been granted by Canada and the United States. In its view, the probability of reaching satisfactory arrangements to ship Progas volumes through Northern Border represents a reasonable business risk to TransCanada.

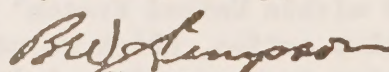
4. Does the Federal Energy Regulatory Commission decision authorizing the import of gas from Pan-Alberta under a Minimum Annual Bill impede the financing of the project?

This project is financeable notwithstanding the decision referred to.

5. On the assumption stated, is Foothills (Yukon) prepared to proceed with the construction and financing of the project?

Yes.

Yours very truly,


Bruce W. Simpson

